

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

\* \* \* \* \*

STATE OF OKLAHOMA, et al.,

Plaintiffs,

vs.

TYSON FOODS, INC., et al.,

Defendants.

Case No.

4:05-CV-00329-TCK-SAJ

\* \* \* \* \*

DEPOSITION OF BEN POLLARD

TAKEN ON BEHALF OF THE DEFENDANTS

ON JANUARY 9, 2007, BEGINNING AT 9:36 A.M.

IN OKLAHOMA CITY, OKLAHOMA

\* \* \* \* \*

APPEARANCES:

MR. ROBERT D. SINGLETARY, Attorney at Law, of the  
Office of Attorney General, 4545 N. Lincoln Boulevard, Suite  
260, Oklahoma City, Oklahoma 73105, appearing on behalf of  
the PLAINTIFF.

MS. D. SHARON GENTRY, Attorney at Law, of the firm  
Riggs, Abney, Neal, Turpen, Orbison & Lewis, 5801 N.  
Broadway, Suite 101, Oklahoma City, Oklahoma 73118, appearing  
on behalf of the PLAINTIFF.

MS. NICOLE M. LONGWELL, Attorney at Law, of the  
McDaniel Law Firm, 320 South Boston, Suite 700, Tulsa, Oklahoma  
74113, appearing on behalf of the DEFENDANT PETERSON  
FARMS, INC.

(Appearances continued on Page 2)

REPORTED BY: DANIEL LUKE EPPS, CSR, RPR

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1 documents, we're not including any electronic  
2 documents because it was your understanding that  
3 that was not what these requests were seeking?

4 A Correct.

5 Q Request for Production Number 2 states,  
6 "Produce all data and documents related to any  
7 complaint or notice of violation received by or  
8 made known to the OCC pertaining to any point  
9 source dischargers within the Illinois River  
10 Watershed." Did you identify any documents  
11 within the six divisions that you are the custodian  
12 of records for that were responsive to Request for  
13 Production Number 2?

14 A I did not personally see one that's  
15 responsive to this. I expected there is some  
16 correspondence either from our water quality  
17 division to our director --

18 Q Okay.

19 A -- or from the Department of  
20 Environmental Quality or another agency.

21 Q And would those be -- would those be -- if  
22 there are -- if there is correspondence which would  
23 be related to Request for Production Number 2  
24 between the ODEQ and this agency, or the water  
25 quality division and the executive director, would

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1 responsive to this one.

2 Q What type of documents would be within  
3 the IT boxes that would be responsive to Request  
4 for Production Number 3?

5 A I anticipate there will be some maps  
6 related to some of the water quality division  
7 studies and reports that were generated in support  
8 of those reports.

9 Q Okay. And what type of documents would  
10 be maintained in the administrative files which  
11 would be responsive to Request for Production  
12 Number 3?

13 A There would be a number of documents  
14 under non point source in administration. We  
15 have -- we've had a number of projects over the  
16 years within the Illinois River, so it would be -- it  
17 could be reports and correspondence and  
18 presentations to the legislature, those sorts of  
19 reports.

20 Q Okay. Can you identify for me the  
21 specific administrative boxes that those documents  
22 responsive to Request Number 3 may be located?

23 A Well, if you'll give me a moment, I'll see  
24 where the minutes start, and I can give you the  
25 exact number on them.

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1 those be maintained in the administrative boxes?

2 A Yes.

3 Q And would that be administrative boxes 1  
4 through 7 or 8?

5 A Yes.

6 Q Okay. Is there any other division which  
7 would have maintained -- would have maintained  
8 any documents responsive to Request for  
9 Production Number 2?

10 A No.

11 Q Has the Oklahoma Conservation  
12 Commission produced all documents responsive to  
13 Request for Production Number 2?

14 A Yes, to the best of my knowledge.

15 Q Okay. And looking at Request for  
16 Production Number 3, it states, "Produce all data  
17 and documents related to any non point source  
18 within the Illinois River Watershed, including but  
19 not limited to any investigations, reports, studies  
20 or projects undertaken or considered, whether or  
21 not completed." Did you identify any documents  
22 responsive to Request for Production Number 3?

23 A Not specific documents. I can tell you  
24 that there should be documents in both  
25 administration and our IT boxes that would be

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1 Q That would be perfect. Thank you.

2 A Okay. I believe boxes 7, 8, 9, and 10 are  
3 the bound minutes of the Conservation  
4 Commission, and the remainder of the boxes  
5 marked administrative will have sorted  
6 correspondence reports primarily from the  
7 executive director.

8 Q Okay. Some would then box --  
9 administrative boxes 1 through 6 and 10 through  
10 15, would it be accurate to say that they may  
11 contain information responsive to Request for  
12 Production Number 3?

13 A That's correct.

14 Q Okay. And which of the three IT boxes  
15 would contain documents responsive to Request  
16 Number 3?

17 A I don't know.

18 Q Okay. Has the OCC produced all  
19 documents responsive to Request Number 3?

20 A To the best of my knowledge, yes.

21 Q Okay. To your knowledge, has there been  
22 any documents which were responsive to Request  
23 Number 3, and for that matter Request Number 2. I  
24 didn't ask this question there either, that would  
25 have been destroyed under the state's document

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1 District in Sallisaw is Pat Fentress. Delaware  
2 County Conservation District in Jay is Christine.  
3 and I can't recall her last name at the moment.

4 Q (BY MS. HILL) Thank you. I appreciate  
5 your efforts. I'm impressed that you could  
6 remember. Were you aware that the attorney  
7 general and their attorneys have produced  
8 documents about 2,300 pages or so already in this  
9 litigation that were from -- identified as being  
10 from the Oklahoma Conservation Commission?

11 A No.

12 Q So you have not been involved in any  
13 prior document production relating to the  
14 litigation, I can assume?

15 A No, you can't assume that.

16 Q Okay.

17 A We've produced documents. I didn't know  
18 the extent of what they produced for this case,  
19 but, yes, they've asked us for documents  
20 previously.

21 Q Okay. Tell me then about your  
22 involvement in preparing documents prior to this  
23 production. What did you do?

24 A Me personally or the agency?

25 Q Tell me first your involvement personally.

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1 exactly what I want to know is whether any  
2 documents that may have been previously  
3 produced, were they reproduced here?

4 A Well, the production for this subpoena  
5 was much more extensive.

6 Q Uh-huh.

7 A We've had every -- basically every staff  
8 person involved, so it was -- this production was  
9 much more extensive than what we've previously  
10 worked on.

11 Q Okay. So did you make any effort to pull  
12 out any production of documents that have already  
13 been previously produced or would they be  
14 contained in this document production?

15 A They should be in this document  
16 production.

17 MS. HILL: Okay. Just to reflect the  
18 record, can we make note of the other person who's  
19 joined the room so we can be clear of everyone  
20 who's been in this deposition? I'm sorry, sir.

21 MR. THRALLS: Would you like to know  
22 my name?

23 MS. HILL: Yes, please.

24 MR. THRALLS: Mike Thralls.

25 MS. HILL: Okay. Pleasure to meet you,

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1 A I've been involved in several meetings  
2 with representatives of the attorney general's  
3 office about information that they thought that  
4 they would need.

5 Q Okay. And are you aware of efforts by the  
6 agency generally to produce documents for the  
7 litigation other than this document production?

8 A Say that again.

9 Q You told me about your personal  
10 involvement.

11 A Uh-huh.

12 Q Are you aware of the agency's efforts to  
13 produce documents?

14 A For the attorney general?

15 Q Relating to this litigation.

16 A Yes.

17 Q Okay. And can you describe what those  
18 efforts are?

19 MS. GENTRY: I'm going to object here,  
20 Theresa, because I don't think that has anything  
21 to do with the subpoena and the reason we're here  
22 today.

23 Q (BY MS. HILL) I think that the document  
24 production that has been made before is related to  
25 perhaps what is reproduced here, and that's

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1 Mr. Thralls. We've heard your name today, so...

2 MR. THRALLS: I hope it wasn't used in  
3 vain.

4 Q (BY MS. HILL) Not at all. Thank you.  
5 Mr. Pollard, I'm going to hand you what I've  
6 marked as Exhibit Number 3. If you turn to the  
7 second page, you'll see that these are Cargill  
8 Turkey Production, LLC's amended first  
9 interrogatories and request for production of  
10 documents to plaintiffs. Have you seen this  
11 document before?

12 (Exhibit-3 marked for identification)

13 A No.

14 Q I'm going to ask you to take a look over at  
15 page number 9 where the request for production  
16 begins, and ask you again to take a look at those  
17 and tell me whether you've reviewed any of these  
18 requests for production before?

19 A No, I haven't.

20 Q I'm going to hand you what I've marked as  
21 Exhibit Number 4, and these are Cargill, Inc.'s  
22 amended first interrogatories and request for  
23 production of documents to plaintiffs. Have you  
24 ever seen this document before?

25 (Exhibit-4 marked for identification)

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A No.

Q Okay. Under this same thing and ask you to turn to where the request for production began on page 8.

A Okay.

Q And ask you if you've ever reviewed the requests for production that are contained in this document?

A No.

Q Were you asked to locate or obtain documents beyond what was contained in the Peterson request that we went through earlier or was the sole assignment that you received limited to the Peterson requests?

A Yes. The only thing we responded to was the -- this Peterson document.

Q Okay.

A You're talking -- you're not talking now about the previous work we put together for the attorney general?

Q No. Other than any work for the attorney general.

A Yeah. Just the Peterson is the only one that I've seen and that was shared with our management team.

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A Since 1991.

Q Since 1991. And did you work for the commission prior to that as well?

A Yes.

Q How long have you been with the Conservation Commission in total?

A Twenty-nine years.

Q My client -- clients, Tyson Foods, Tyson Poultry, Tyson Chicken, and Cobb-Vantress have sent two different types of discovery requests to the state of Oklahoma in this case. One type is called interrogatories. One type is called a request for production. I'm going to ask you have you seen any requests from any of my clients?

A No.

Q Okay. And I'm assuming since you have not seen any of those requests, you have not asked any of your staff to find information which is responsive to those requests?

A Correct.

Q Do you know who Miles Tolbert is?

A Yes.

Q Who is Miles Tolbert?

A He's the secretary of environment for the state of Oklahoma.

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Q Okay. And regardless of whether you've seen a document or not, other than the attorney general production --

A Uh-huh.

Q -- and other than the Peterson production, have you been asked to produce any additional documents for this production?

A No.

MS. HILL: I don't think I have any additional questions then, but I'm going to pass the witness to Michael and reserve my right to come back.

## DIRECT EXAMINATION

BY MR. BOND:

Q Okay. I'll try to be brief because you've been pretty patient for an awful long time here. Mr. Pollard, my name is Michael Bond, and I represent Tyson Foods, Tyson Chicken, Tyson Poultry, and Cobb-Vantress in this case.

A Okay.

Q I just have a couple of quick housekeeping questions and then a couple more after that, but your title is assistant director?

A Correct.

Q How long have you held that position?

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Q Has Mr. Tolbert come over here and reviewed the documents that are in this room?

A Not to my knowledge.

Q Has he ever come over here and reviewed documents with respect to this litigation that you know of?

A Physically in this room after we've compiled them or at any other time?

Q Or at any other time.

A Not to my knowledge, no.

MR. BOND: I don't have any further questions.

MS. LONGWELL: I have no further questions for you, Mr. Pollard, so I think that means unless any of the other defendants in the room have any questions, I just reserve the right to re-call Mr. Pollard or the appropriate person for the Oklahoma Conservation Commission with regards to any physical documents that we find were not produced and should have been subsequently or any electronic discovery since discovery -- they haven't conducted any electronic search through the electronic information within the OCC.

MS. GENTRY: Okay. Well, we can